

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish
Consumer Rights and Consumer Protection Rules
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING FINDING NCLC
ELIGIBLE TO CLAIM INTERVENOR COMPENSATION**

This ruling grants National Consumer Law Center, Inc.'s (NCLC) motion to accept a late-filed Notice of Intent to Seek Intervenor Compensation, and finds NCLC eligible for an award of intervenor compensation pursuant to Public Utilities Code Section 1801 *et seq.*

Intervenor Compensation Requirements

The intervenor compensation program set forth in Section 1801 *et seq.*¹ allows public utility customers to receive compensation for their participation in Commission proceedings. To receive an award, a customer must make a substantial contribution to the adoption of the Commission's order or decision and demonstrate that participation without an award would impose a significant financial hardship.²

Section 1804 requires a customer who intends to seek an award to file and serve within 30 days after the prehearing conference (PHC) a notice of intent to

¹ All references are to the Public Utilities Code.

² Section 1803.

claim compensation (NOI). Section 1804(a) and the Commission's Rules of Practice and Procedure, Rule 76.74, allow the Administrative Law Judge (ALJ) to establish a deadline for filing NOIs when no PHC is scheduled. The NOI must include a statement of the nature and extent of the customer's planned participation, and an itemized estimate of the compensation the customer expects to request. The customer's showing of significant financial hardship may be included with the NOI or may be included with the request for award after the Commission's final decision in the proceeding.

If, as in this instance, the NOI includes the customer's financial hardship showing, the ALJ in consultation with the Assigned Commissioner must issue within 30 days a preliminary ruling addressing whether the customer will be eligible for an award under the intervenor compensation program.³ To determine eligibility, two questions must be addressed: whether the intervenor is a "customer" as defined in Section 1802(b), and whether participation will present a significant financial hardship.⁴ The ALJ's ruling should also identify which type of customer the intervenor is: a participant representing consumers; a representative authorized by a customer; or a representative of a group or organization authorized by its bylaws or articles of incorporation to represent the interests of residential customers. A finding of significant financial hardship creates a rebuttable presumption of eligibility in other Commission proceedings commencing within one year of the date of that finding.

³ Section 1804(b)(1).

⁴ Decision (D.) 98-04-059.

NCLC's Motion and NOI

No PHC has been held in this proceeding. The ALJ's May 19, 2000 ruling established September 14, 2000 as the deadline for filing NOIs. NCLC filed its NOI on August 7, 2001 with a motion to accept it late-filed.

The outcome of some of the topics the Commission is considering in this proceeding may hinge on questions of state and federal law, and the requirements of federal agencies including the Federal Communications Commission and Federal Trade Commission. As will be seen below, NCLC's NOI shows that it could bring considerable legal expertise to bear on behalf of low-income customers who are not able to represent themselves. The Commission desires to have the best expertise possible applied to the matters it is considering. NCLC could contribute greatly toward that end in this proceeding. Since NCLC is proposing to participate prospectively and not to catch up with the various rounds of comment and reply filings the parties have made to date, no party would be disadvantaged by NCLC's late entry. NCLC's motion should be granted and its NOI evaluated on the merits.

NCLC's NOI indicates it is a non-profit consumer advocacy organization organized in 1971 under the laws of the Commonwealth of Massachusetts. NCLC's Articles of Organization attached to its NOI indicate that among its purposes are,

...to provide relief for poor, distressed and underprivileged consumers; to undertake research into the legal aspects of consumer problems; to maximize the rights available to consumers and to assist consumers in obtaining needed reformation of the law through the judicial and other lawful processes; to enhance the protection of the consumer from adverse market conditions and to strengthen their bargaining power and increase their freedom of choice; to promote the social welfare of consumers....

NCLC works solely on behalf of low-income residential consumers of various utility services, including telecommunications, electricity and natural gas. It does not now represent and has not in the past represented non-residential consumer interests.

NCLC is a customer of the third type, i.e., a representative of a group or organization authorized by its bylaws or articles of incorporation to represent the interests of residential customers, and thus is a "customer" as defined in Section 1802(b).

NCLC intends to participate by filing comments and reply comments on any proposed telecommunications bill of rights, and engaging in such other ways as the Commission may allow. It plans to address a broad range of issues including, but not limited to: the substance and form of disclosure carriers make to consumers, in order to ensure consumers fully understand their rights and obligations; mechanisms to protect privacy; methods of enforcing the rights granted in this proceeding and existing law, regulations and rulings; form and content of bills and notices; considering the needs of those whose primary language is not English; and ensuring any rules or policies the Commission may adopt are not preempted or undermined by federal statutes, regulations or policies. The topics to be addressed appear to fall within the scope of the proceeding.

NCLC has included a line-item estimate of the compensation it expects to request. NCLC estimates its costs will be \$15,625. In its accompanying financial statements for calendar year 2000, it shows annual expenses of \$3.2 million and operating reserves not already dedicated to other projects or purposes of \$543,000, representing two months of operating expense. This, NCLC says, is a far smaller reserve than its auditors advise and its board deems prudent.

To be eligible for compensation as a customer of the third type, the financial hardship test requires the economic interest of NCLC's individual members be small in comparison to the costs of effective participation. In contrast to rate cases and many other Commission proceedings, this rulemaking bears less directly on utility ratepayers' economic interests. Rather, here the Commission seeks to establish a telecommunications consumers' bill of rights and rules to protect those rights. Rules for enforcing consumers' rights to, *e.g.*, disclosure and choice do have economic implications, but those effects for individuals of the type NCLC represents are indeed small in comparison to the costs of participation. NCLC meets the significant financial hardship test.

NCLC has met the requirement of including in its NOI a statement of the nature and extent of its planned participation, and an itemized estimate of the compensation it expects to request. No party has indicated opposition to NCLC's NOI. After consulting with the Assigned Commissioner, I find that NCLC's motion to accept its late-filed NOI should be granted, and that NCLC should be eligible for an award under the intervenor compensation program.

This finding of eligibility to claim compensation in no way assures NCLC will subsequently receive an award. The determination of what compensation, if any, NCLC should be granted will come only when NCLC has filed its request pursuant to Section 1804(c) after the issuance of the final order in this proceeding.

IT IS RULED that:

1. National Consumer Law Center, Inc.'s (NCLC) motion to accept its late-filed Notice of Intent (NOI) to Seek Intervenor Compensation is granted. NCLC's NOI is accepted.

2. NCLC's NOI meets the applicable requirements under Public Utilities Code Section 1804(a).

3. NCLC is a group or organization authorized by its articles of organization to represent the interests of residential customers, and meets the definition of "customer" set forth in Section 1802(b).

4. NCLC has shown that its participation in this proceeding without an award of fees or costs would impose a significant financial hardship. Thus, NCLC will enjoy a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing between August 17, 2001 and August 17, 2002.

5. NCLC is eligible for an award of compensation in this proceeding. This finding of eligibility in no way assures NCLC will be awarded compensation.

Dated August 17, 2001, at San Francisco, California.

/s/ JAMES C. McVICAR

James C. McVicar
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Finding NCLC Eligible to Claim Intervenor Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 17, 2001, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

N O T I C E

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